DECISION · THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-187253   DATE: March 15, 1977

MATTER OF: Amram Nowak Associates, Inc.

DIGEST:

> Claimant is not entitled to recover proposal
> preparation costs where record does not show
> that agency's rejection of offeror's proposal
> was deliberate or arbitrary notwithstanding
> deficiencies noted in agency's negotiation
> procedures.

This decision involves the claim of Amram Nowak
Associates, Inc. (Nowak) for bid preparation costs
in the amount of $500.00. In our decision of November
29, 1976, 76-2 CPD 454 this Office found that the
Department of Housing and Urban Development (HUD) had
erred in not conducting under the circumstances therein
presented, meaningful discussions with Nowak prior to
accepting another proposal at a higher price and that
its solicitation was reasonably subject to different
interpretations. However, because the contract had
been completed, was not illegal and the record reflected
no deliberate or arbitrary attempt to disqualify Nowak,
no remedial action was recommended other than that HUD
insure that such procurement deficiencies not be repeated.

The standard for determining whether to allow recovery
of proposal preparation costs is whether the procuring
agency's actions were arbitrary and capricious toward
the rejected offeror. T&H Company, B-181261, June 9, 1975,
75-1 CPD 345; The McCarty Corporation v. United States,
499 F.2d 633 (Ct. Cl. 1974). We think that the deficien-
cies noted in this case were significant and improper but
as the decision of November 29, 1976 notes, we are unable
to find a deliberate or arbitrary attempt to disqualify
Nowak. At worst, the HUD evaluators appear to have been
in error as to the clarity of the solicitation and con-
fused as to what constitutes oral or written discussions
as provided in Federal Procurement Regulations § 1-3.805-
1(a).

- 1 -

B-187253

Under the circumstances, Novak's claim for bid
preparation costs is denied.

Deputy Comptroller General
of the United States